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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 166

THE VILLAGE OF HIGHLAND FALLS, NEW YORK,
PETITIONER

v.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 14-21) is reported at 82 F. Supp. 516.

JURISDICTION

The judgment of the Court of Claims was entered on February 7, 1949 (R. 21). On April 28, 1949, the Chief Justice extended the time within which petitioner might file a petition for certiorari to July 6, 1949 (R. 21). The petition for certiorari

was filed on July 6, 1949. The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1255(1).

QUESTION PRESENTED

Whether the proviso to section 1 of the Act of March 3, 1931, 46 Stat. 1491, constituted a ratification by the United States of certain promises allegedly made by the Secretary of War to petitioner in a letter of February 28, 1931.

STATUTE INVOLVED

Section 1 of the Act of March 3, 1931, 46 Stat. 1491, provides:

> * * * That the Secretary of War is hereby authorized to acquire, by purchase, condemnation, or otherwise, additional land in the vicinity of, and for use by, the United States Military Academy, in connection with the present military reservation at West Point, New York, such land being fifteen thousand one hundred and thirty-five acres, more or less, and including land surrounding Popolopen Lake, land bordering on the River Hudson, and other interlocking plots of land, all located in Orange County, New York; and the sum of $1,500,000 is hereby authorized to be appropriated, which sum shall remain available until expended: *Provided,* That nothing herein contained shall adversely affect the existing water supply, its sources, or pipe lines of the town of Highlands, New York.

STATEMENT

Petitioner filed a petition in the Court of Claims seeking damages of $300,000 plus interest (R. 1-7).

The Government demurred because the petition failed to state a cause of action (R. 9-13), and the court dismissed the petition (R. 21).

The allegations of the petition may be summarized as follows:

Petitioner is a municipal corporation located in the Town of Highlands, New York. On February 12, 1931, a subcommittee of the Committee of Military Affairs of the House of Representatives held hearings upon proposed legislation authorizing the Secretary of War to acquire certain lands for the United States Military Academy (R. 1). Representatives of petitioner and of the Town opposed the legislation on the ground that acquisition of the lands would adversely affect petitioner's water supply (R. 2).

At the direction of the subcommittee chairman, representatives of the War Department and of the protesting municipalities conferred for the purpose of agreeing upon measures necessary to protect the municipalities. To meet the lattter's objections the Government representatives agreed to have inserted in the legislation a proviso that "nothing herein contained shall adversely affect the existing water supply, its sources or pipelines of the Town of Highlands, New York." (R. 2.) A letter dated February 28, 1931, signed by the Secretary of War, was delivered to the municipalities (R. 3). This letter (Ex. A, R. 8-9) stated that:

> Immediately after July 1, 1932, the War Department will, insofar as it has legal author-

> ity, take all necessary steps to acquire the land upon which the water supply and system of the Village of Highland Falls is located, including the purchase, at a price mutually agreeable, of the interest therein which said village now owns in the watershed from which this supply is obtained. When the watershed is acquired, the War Department will guarantee to said Village of Highland Falls the right to the use of the water up to the capacity of the said Village of Highland Falls's present watershed without charge.
>
> * * * * *
>
> This statement is made to you for the purpose of obtaining your consent to the bill now pending and will not be binding on either party if said bill fails to be passed by the present Congress.

The proviso was included in the bill. In reliance upon the agreement and letter the municipalities withdrew their objections and the legislation became the Act of March 3, 1931, 46 Stat. 1491.

It was alleged that the United States broke its agreement with petitioner in the following respects: First. Petitioner owned a tract of about 400 acres in the watershed from which its water was obtained. Instead of purchasing this land at a "price mutually agreeable", the United States condemned it at a price less than that contemplated by the parties and at less than its fair value.[1] Second. The United States did not acquire the land on

[1] On petitioner's appeal, the judgment in condemnation was affirmed. *United States* v. *Village of Highland Falls*, 154 F. 2d 224 (C.A. 2). Concerning the alleged contract, the court said (p. 226): "With the validity of that contract, we have no con-

which the water supply and system were located. This land was owned by the Citizens Waterworks Company. Petitioner acquired it at considerable expense. Third. The United States did not offer to make available to petitioner the right to use water without charge or on any other basis. (R. 5-6.)

In its opinion the Court of Claims pointed out: The Secretary's letter did not confer any rights upon petitioner: First, the promise to acquire the 400 acre tract at a "price mutually agreeable" was obviously unenforceable because it fixed no way, except further agreement, of arriving at a price (R. 18-19). Second, so long as the privately owned waterworks continued to furnish water to petitioner, it was not damaged by the Government's failure to acquire the waterworks (R. 19). Third, if the Secretary of War had promised to acquire the waterworks for the purpose of operating them in perpetuity for a municipality, the promise was not authorized by statute and consequently was invalid (R. 19-20). In enacting the Act of March 3, 1931, Congress did not ratify the letter; "it put in the statute only the proviso * * * and neither incorporated by reference nor authorized the making of the promises made by the Secretary" (R. 20).

ARGUMENT

An examination of the opinion below shows that there is no basis for petitioner's contention (Pet. 2,

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cern, the Village is of course free to sue upon it whenever it chooses; but its existence is altogether irrelevant in this proceeding."

8-13) that the Court of Claims disregarded the allegations of the petition as to the terms of the purported contract. This contention appears to rest upon the fact that the court expressed incredulity that the Secretary of War intended to promise "to buy a waterworks and system of pipes which were not to be used for any Government purpose, and to operate the works and system, apparently in perpetuity, to furnish free water to a municipality which had been buying its water from a private owner of the same works and system before" (R. 19). What the court below did, however, was to assume the truth of the allegations and to hold that the Secretary had no authority to make the alleged promise.

On the merits, the sole contention of the petitioner here is that the proviso to section 1 of the Act of March 3, 1931, authorized the Secretary to make such a commitment (Pet. 3, 13-18). The proviso declares: "That nothing herein contained shall adversely affect the existing water supply, its sources, or pipe lines of the town of Highlands, New York." This language does not in terms incorporate a promise to buy a waterworks and operate it for petitioner's benefit; it merely prohibits any damage to the existing water supply. And, as the Court of Claims pointed out (R. 19), the petition did not assert that anything done under the Act adversely affected the water supply.

Petitioner's interpretation of the proviso rests upon its version of part of the legislative history.

It asserts that before the legislation passed the House of Representatives the letter was read to that body by one of its members,[2] that he ascribed to it the meaning and effect for which petitioner contends, and on the basis of that understanding withheld objection to immediate passage of the bill (Pet. 5, 9, 11, 14-15). If the account is correct, the member in question may have misunderstood the proviso. But such a mistake on his part could not change the clear meaning and effect of the legislation. *Pine Hill Co.* v. *United States,* 259 U. S. 191, 196.

CONCLUSION

The decision below raises no questions of general importance which warrant review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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SEPTEMBER, 1949.

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[2] Petitioner asserts (Pet. 5) that the proviso was inserted after the letter was read to the House. On the contrary, the proviso was in the bill when it was reported to that body. H. Rept. No. 2723, 71st Cong., 3d Sess.; 74 Cong. Rec. p. 6780. It is not clear that the letter was read to the House. It appears in the course of an extension of remarks by the member. 74 Cong. Rec. pp. 6781-6782.

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